

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE: George F. Wood)
Map 142-00-0, Parcel 218.00) Davidson County
Residential Property)
Tax Year 2005)

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$46,000	\$160,800	\$206,800	\$51,700

An appeal has been filed on behalf of the property owners with the State Board of Equalization.

This matter was reviewed by the undersigned administrative law judge pursuant to Tennessee Code Annotated, §§ 67-5-1412, 67-5-1501 and 67-5-1505. A hearing was conducted on April 13, 2006 at the Davidson County Property Assessor's Office. Present at the hearing were George F. Wood, the appellant, and Davidson County Property Assessor's representative, Jason Poling.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a single family residence located at 115 Bellevue Road in Nashville, Tennessee.

The initial issue is whether or not the State Board of Equalization has the jurisdiction to hear the taxpayer's appeal. The law in Tennessee generally requires a taxpayer to appeal an assessment to the County Board of Equalization prior to appealing to the State Board of Equalization. Tenn. Code Ann. §§ 67-5-1401 & 67-5-1412(b). A direct appeal to the State Board of Equalization is only permitted if the assessor does not timely notify the taxpayer of a change of assessment prior to the meeting of the County Board. Tenn. Code Ann. §§ 67-5-508(b)(2) & 67-5-1412(e). Nevertheless, the legislature has also provided that:

The taxpayer shall have **a right to a hearing and determination to show reasonable cause** for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the [state] board shall accept such appeal from the taxpayer up to March 1st of the year subsequent to the year in which the assessment is made (*emphasis added*).

In analyzing and reviewing Tenn. Code Ann. § 67-5-1412(e), the Assessment Appeals Commission, in interpreting this section, has held that:

The deadlines and requirements for appeal are clearly set out in the law, and owners of property are charged with knowledge of them. It was not the intent of 'reasonable cause' provisions to waive these requirements except **where the failure to meet them is due to illness or other circumstances beyond the taxpayer's control.** (*emphasis added.*) *Associated Pipeline Contractors Inc.* (Williamson County, Tax Year 1992, Assessment Appeals Commission, Aug. 11, 1994). See also *John Orovetz*, (Cheatham County, Tax Year 1991, Assessment Appeals Commission, Dec. 3, 1993).

Thus, for the State Board of Equalization to have jurisdiction to this appeal, the taxpayer must show that circumstances beyond his control prevented him from appealing to the Davidson County Board of Equalization. It is the taxpayer's burden to prove that he is entitled to the requested relief.

It is undisputed in this case that the current appellants purchased the property on March 17, 2005. It is further undisputed that the Notice of Assessed Value Classification and Assessment was mailed on March 25, 2005 to Dennis and Jean Bruxvoort, the then owners of the property in question. It is further undisputed that the Bruxvoort's did not file an appeal after receiving the assessment since they no longer owned the property. The current taxpayer simply states that he did not receive the notice since he did not acquire the property until after the assessment date. The question becomes whether it is too late for the current owner to perfect his appeal in order to contest the current assessment. The County Board of Equalization for Davidson County began hearing cases on June 1, 2005, with the last date to schedule appointments for hearings being June 17, 2005. The current taxpayers/appellants are the real parties in interest as it is their property that is the subject of this appeal. *Appeal of Vivian & Russ Ragsdale*, Davidson County, Tax Year 2001, Assessment Appeals Commission, Tennessee State Board of Equalization, August 13, 2003; finding reasonable cause exists in situations where notice was sent to *prior* owners, the assessment change notice did not come to the Ragsdale's attention at all. The administrative judge determined this did not make any difference and denied relief for the current taxpayers. The Commissions rationale in determining that reasonable cause exists to excuse the late appeal to the State Board hinges on.

... it is apparent that no effective notice of the new assessment was sent to those **most interested in receiving it.** This is not the fault of the assessor, of course, but it is a circumstance we cannot ignore in determining whether the taxpayer has been afforded reasonable opportunity to appeal the new assessment (*emphasis added*).

The Ragsdale decision was appealed to Chancery Court by the Metro Government of Nashville and Davidson County (Case No. 04-1811-IV), the Assessment Appeals Commissions decision was affirmed on April 18, 2006. Therefore, the current status of the law establishes "reasonable cause" for taxpayers in the Woods' position.

ORDER

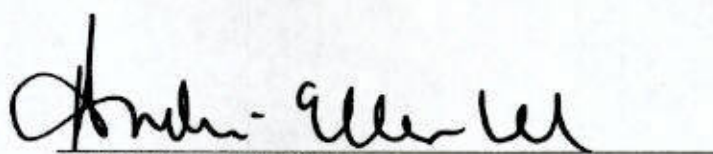
Based upon the circumstances of this case and the previous ruling in *Ragsdale* by the State Board of Equalization, the administrative judge finds that "reasonable cause" exists for the taxpayer's failure to file before the County Board of Equalization. An order will be sent setting this matter for a further hearing on the issue of value.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 28th day of April, 2006.



ANDREI ELLEN LEE
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. George F. Wood
Jo Ann North, Assessor of Property

BEFORE THE STATE BOARD OF EQUALIZATION
ASSESSMENT APPEALS COMMISSION

Appeal of:	VIVIAN & RUSS RAGSDALE)	
	Map 063-16-0, Parcel 26.00)	Davidson
	Residential Property)	County
	Tax Year 2001)	

FINAL DECISION AND ORDER

Statement of the case

This is an appeal by the taxpayer from the initial decision and order of the administrative judge who determined the State Board lacked jurisdiction to hear the appeal because the taxpayer failed to first appeal to the Davidson County Board of Equalization or to timely appeal to the State Board. The appeal was heard on April 14, 2003 before Commission members Isenberg (presiding), Ishie, and Rochford, sitting with an administrative judge.¹ Mr. Ragsdale represented himself and the assessor was represented by Mr. Daniel Cortez of the Metropolitan Department of Law.

Findings of fact and conclusions of law

The taxpayer purchased the property on April 26, 2001, and the 2001 Davidson County reappraisal notice sent at about the time of this transaction was listed in the name of the seller, Stephen Meyer.² This notice was probably forwarded to Mr. Meyer at his new address pursuant to a postal forwarding order, and in any event the assessment change notice did not come to the Ragsdales' attention at all. The administrative judge determined this did not make any difference since even if no notice had been sent, the taxpayers would have had only until forty-five days from the tax billing date to appeal to the State Board and they did not meet this requirement either.

Tenn. Code Ann. §67-5-1412 (e) provides as follows:

(e) Appeals to the state board of equalization from action of a local board of equalization must be filed before August 1 of the tax year, or within forty-five (45) days of the date notice of the local board action was sent, whichever is later. If notice of an assessment or classification change pursuant to §67-5-508 was sent to the taxpayer's last known address later than ten (10) days before the adjournment of the local board of equalization, the taxpayer may appeal directly to the state board at any time within forty-five (45) days after the notice was sent. *If notice was not sent, the taxpayer may appeal directly to the state board at any time within forty-five (45) days after the tax billing date for the assessment.* The taxpayer has the right to a hearing and determination to show reasonable cause for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the board shall accept such appeal from the taxpayer

¹ An administrative judge other than the judge who rendered the initial decision and order sits with the Commission pursuant to Tenn. Code Ann. §4-5-301 and rules of the Board.

² The earliest the assessor could have determined the property was sold to the Ragsdales, would have been some time after the deed was recorded.

up to March 1 of the year subsequent to the year in which the assessment was made. (Emphasis supplied)

Under the circumstances, the Ragsdales having purchased and moved into the property during the time when the notice of new assessment was sent, it is apparent that no effective notice of the new assessment was sent to those most interested in receiving it. This is not the fault of the assessor, of course, but it is a circumstance we cannot ignore in determining whether the taxpayer has been afforded a reasonable opportunity to appeal the new assessment.

The savings clause of the statute, highlighted above, was evidently intended to give the taxpayer a final right of appeal where the assessment change notice was not sent, by treating the tax notice as a substitute for the assessment change notice or perhaps, by assuming that a normally curious taxpayer would inquire about the assessment even if the taxpayer received no tax notice within forty-five days after the normal tax billing date. Since there is no statutory common billing date, the savings clause must refer to the actual date the trustee sent a tax bill to the taxpayer.³ The only testimony regarding the tax bill in this case was that Mr. Ragsdale was sent a duplicate or "courtesy" tax notice in November or December. The primary tax notice was sent to his mortgagee. Mr. Ragsdale appealed to the State Board on or about December 11, within forty-five days of the date of actual notice in the form of the duplicate sent to him by the trustee. We find no basis in the facts of this case for concluding that Mr. Ragsdale should have known of the assessment change any earlier than the date he was sent this latter notice, and therefore reasonable cause to excuse the late appeal to the State Board, has been established.

ORDER

It is therefore ORDERED, that this matter is remanded for a hearing before the administrative judge on the merits of the taxpayer's claim of an excessive assessment.

This order is subject to:

1. Reconsideration by the Commission, in the Commission's discretion.

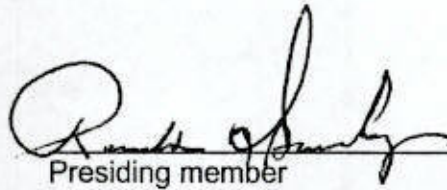
Reconsideration must be requested in writing, stating specific grounds for relief and the request must be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.

³ The first Monday in October is the assessor's deadline to provide a tax roll from which the trustee sends tax bills (Tenn. Code Ann. §67-5-807). It is also the date taxes become payable (Tenn. Code Ann. §67-1-701), but it is not necessarily the tax billing date.

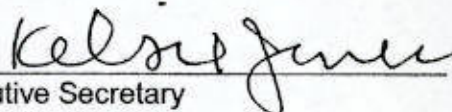
2. Review by the State Board of Equalization, in the Board's discretion. This review must be requested in writing, state specific grounds for relief, and be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.
3. Review by the Chancery Court of Davidson County or other venue as provided by law. A petition must be filed within sixty (60) days from the date of the official assessment certificate which will be issued when this matter has become final.

Requests for stay of effectiveness will not be accepted.

DATED: Aug 13, 2003


Presiding member

ATTEST:


Executive Secretary

cc: Mr. Russ Ragsdale
Ms. JoAnn North, Assessor
Mr. Daniel Cortez, Metro Legal Dept.